

N.D. Ind. L.R. 1–1 Citation and Scope of the Rules

(a) Citation.

- (1) *Civil Rules.*** The local civil rules of the United States District Court for the Northern District of Indiana may be cited as “N.D. Ind. L.R.”
- (2) *Criminal Rules.*** The local criminal rules of the United States District Court for the Northern District of Indiana may be cited as “N.D. Ind. L. Cr. R.”
- (3) *Patent Rules.*** The local patent rules of the United States District Court for the Northern District of Indiana may be cited as “N.D. Ind. L.P.R.”

(b) Effective Date and Scope of Rules. These rules, as amended, take effect on January 1, 2012. They govern all civil and criminal cases on or after that date. But in cases pending when the rules take effect, the court may apply the former local rules if it finds that applying these rules would not be feasible or would be unjust.

(c) Modification or Suspension of Rules. The court may, on its own motion or at the request of a party, suspend or modify any rule in a particular case in the interest of justice.

N.D. Ind. L.R. 5-3 Filing Under Seal or Ex Parte

(a) **General Rule.** The clerk may not maintain a filing under seal unless authorized to do so by statute, court rule, or court order.

(b) **Filing Cases Under Seal.**

(1) ***Papers Required.*** To seal a case, a party must:

(A) simultaneously file directly with the clerk:

(i) the initial pleadings;

(ii) a motion requesting that the court seal the case;

(iii) a proposed order; and

(B) otherwise comply with the *CM/ECF User Manual*.

(2) ***Treatment of Case Pending Ruling.*** When the clerk receives a new case with a motion to seal it, the clerk must seal the case pending a ruling on the motion.

(3) ***If Motion Is Denied.*** If the court denies the motion, the clerk must immediately unseal the case and may do so without first notifying the filing party.

(c) **Ex Parte and Sealed Filings.**

(1) ***In a Civil Case.*** To file a sealed document (other than an initial filing) or a document ex parte in a civil case, a party must file it electronically as required by the *CM/ECF User Manual*.

(2) ***In a Criminal Case.*** ~~To file a sealed document (other than an initial filing) or a document ex parte in a criminal case, a party must:~~

(A) ~~deliver the document to the clerk in an envelope without folding it; and~~
The following documents may be filed under seal without motion or further order of the court provided counsel has a good faith belief that sealing is required to ensure the safety, privacy or cooperation of a person or entity, or to otherwise protect a substantial public interest:

(i) Documents filed pre-indictment;

- (ii) Documents filed in a sealed case post-indictment and prior to the first defendant being arrested;
- (iii) Requests for search warrants, including warrants for tracking devices;
- (iv) Requests for interception of communications pursuant to 18 U.S.C. § 2516;
- (v) Requests for phone record information pursuant to 18 U.S.C. § 2703;
- (vi) Requests for tax return information pursuant to 26 U.S.C. § 6103;
- (vii) Motions for sentence variance or reduction based on substantial assistance pursuant to Fed. R. Crim. P. 35 or U.S.S.G. § 5K1.1, including supporting documents; and
- (viii) Motions for competency exam.

(B) ~~affix an 8½" x 11" cover sheet to the envelope's exterior that includes:~~
When the documents identified above are filed under seal pursuant to this Rule, the filing party must place the words "under seal" below the case number on the document.

~~(i) the case caption;~~

~~(ii) an appropriate title to publicly identify the document on the docket;~~

~~(iii) the filer's name, address, e-mail address, and telephone number;
and~~

~~(iv) a cite to the statute, rule, or court order (by date) that authorizes sealing the document, if a motion to seal the document does not accompany the document; and~~

(C) ~~electronically file a "Notice of Manual Filing."~~ Other than the documents identified above, documents may be sealed if and only if they are subject to a prior protective order or are accompanied by a contemporaneous motion to seal, which motions may be filed under seal if necessary, by using the following procedure:

- (i)** electronically file a “Notice of Manual Filing;”
- (ii)** affix the Notice of Electronic Filing (NEF) of Notice of Manual Filing to the envelope’s exterior. The contents of the envelope should include:
 - (a)** a motion for leave to file the document under seal;
 - (b)** a proposed form of Order for the motion for leave to file the document under seal; and
 - (c)** the motion or document to be filed under seal.
- (iii)** deliver the document to the clerk in an envelope without folding it;
- (iv)** counsel must provide an original for the clerk’s office and a copy for the judge of each of the documents contained within the envelope.

N.D. Ind. L.R. 6-1 Extensions of Time

- (a) **By Motion.** Ordinarily, requests for an extension of time not made in open court or at a conference must:
- (1) be made by written motion;
 - (2) state the original deadline and the requested deadline; and
 - (3) either:
 - (A) state that there is no objection to the extension; or
 - (B) describe the requesting party's efforts to get opposing attorneys to agree to the extension if there is an objection.
- (b) **Automatic Initial Extension.** ~~The deadline for filing a responsive pleading or a response to a written request for discovery or admissions will automatically be extended upon filing a notice of the extension with the court if:~~ **to respond to a pleading or a discovery request – including requests for admission – is automatically extended when an extension notice is filed with the court and:**
- (1) the deadline has not been extended before;
 - (2) the extension is for 28 or fewer days; **and**
 - (3) ~~the party has diligently attempted to contact opposing attorneys to get their agreement to the extension;~~
 - ~~———— (4) ——— all opposing attorneys the party could reach have agreed to the extension; and~~
 - ~~———— (5) ——— the notice states:~~
 - (A) the original deadline ~~and the requested deadline;~~
 - (B) **the new deadline;** ~~that all opposing attorneys the party could reach have agreed to the extension; and~~
 - (C) **that all opposing attorneys the attorney could reach agreed to the extension; or** ~~that the party could not reach any other opposing attorneys despite due diligence.~~

- (c) **Pro Se Parties.** The automatic initial extension does not apply to pro se parties.

N.D. Ind. L.R. 16-1 Pretrial Procedure

- (a) ~~**Deviation from Rule 16.** The court may deviate from the pretrial procedures in Fed. R. Civ. P. 16 if it first notifies the parties.~~ **Initial Pretrial Conference.** In all cases not exempted under subsection (c) of this rule, the court may order the parties to appear for an initial pretrial conference.
- (b) **Notice from Clerk.** A clerk-issued notice directing the parties to prepare for and appear at a pretrial conference is a court order for purposes of Fed. R. Civ. P. 16(a).
- (c) **Exemptions.** The following cases are exempt from the requirements of Fed. R. Civ. P. 16(b):
- (1) Actions to review an administrative record;
 - (2) Petitions for habeas corpus or other proceedings to challenge a criminal conviction or sentence;
 - (3) Civil forfeitures;
 - (4) Actions by the United States to recover benefit payments;
 - (5) Actions by the United States to collect on a student loan it guaranteed;
 - (6) Actions to enforce or quash an administrative summons or subpoena;
 - (7) Mortgage foreclosures if the United States is a party;
 - (8) Proceedings ancillary to proceedings in another court; and
 - (9) Actions to enforce, vacate, or modify an arbitration award.
- (d) **Planning-Meeting Report.** When the court orders an initial pretrial conference, the parties must file a *Report of the Parties' Planning Meeting* following their Fed. R. Civ. P. 26(f) planning meeting. The report must be consistent with the form on the court's website (www.innd.uscourts.gov). The court may adopt all or some of the report as part of its scheduling order.
- (e) **Preparation for Pretrial Conferences.** Parties must confer before each pretrial conference and must be prepared to address the following matters at the conference:
- (1) case-management plan issues;

- (2) alternative-dispute-resolution processes, including mediation, early neutral evaluation, and mini-trial;
- (3) settlement, including their present positions on settlement;
- (4) trial readiness; and
- (5) any other matters specifically directed by the court.

(f) Settlement Negotiations.

- (1) ***Facilitation at Pretrial Conferences.*** The court may facilitate settlement negotiations at any pretrial conference after an initial conference. Accordingly, attorneys attending a pretrial conference after the initial conference must:

- (A) know their settlement authority; and
- (B) be prepared to negotiate in good faith at the conference.

- (2) ***Attendance by Parties.*** To assist settlement discussions, the court may require a party, a corporate party's agent, or an insurance-company representative to appear at a pretrial conference.

- (3) ***Disclosure Prohibited.*** The court may not disclose the details of any negotiations at a pretrial conference in an order or docket entry.

- (g) **Settlement or Resolution.** The parties must immediately notify the court if they reasonably expect to settle the case or resolve a pending motion.

- ~~(h) **Sanctions.** The court may sanction a party that willfully violates this rule.~~

N.D. Ind. L.R. 83-6.7 Attorneys Convicted of Crimes

(a) Serious Crimes.

- (1) *Immediate Suspension.*** An attorney may be suspended immediately if a court in the United States or its territories, possessions, or commonwealths convicts the attorney of a serious crime.
- (2) *Evidence of Conviction.*** A certified copy of a judgment ~~of~~ **or order reflecting** conviction of a serious crime is conclusive evidence that the crime was committed.
- (3) *Suspension Process.*** When a ~~certified copy of a judgment~~ **conclusive evidence** of conviction of a serious crime is filed with the court:
 - (A)** the court must immediately:
 - (i)** suspend the attorney; and
 - (ii)** serve the attorney with the suspension order; and
 - (B)** the chief judge may refer the matter to the grievance committee.
- (4) *Authority to Set Aside Suspension.*** The chief judge may lift the suspension for good cause.
- (5) *Effect of Reversal.*** If a certificate demonstrating that the conviction has been reversed is filed with the court, the court must immediately reinstate the attorney. But:
 - (A)** any pending disciplinary proceedings against the attorney will continue; and
 - (B)** the court may resolve the pending disciplinary proceedings based on all available evidence pertaining to the attorney's guilt.
- (6) *Grievance Committee Proceedings.*** If the chief judge refers the matter to the grievance committee, the committee must generally treat the matter as a grievance. But:
 - (A)** the committee may not conduct a hearing until all appeals from the conviction are concluded; and

- (B) if the conviction is not reversed, the only issue before the committee will be what discipline to recommend.

(7) ***Effect of Appeals and Manner of Conviction.*** The court and chief judge's obligations under this rule do not change:

- (A) because there are pending appeals or other actions attacking the conviction; or
- (B) due to the manner of conviction (for example, from a guilty plea, *nolo contendere*, or a verdict after trial).

(b) **Other Convictions.** The chief judge may refer a conviction for a non-serious crime to the grievance committee ~~when a certified copy of the judgment of conviction is filed with the court. The committee~~, which must treat the referral as if it were a grievance.

N.D. Ind. L. Cr. R 47-2 ~~Petitions for Habeas Corpus and Motions Pursuant to 28 U.S.C. §§ 2254 and 2255 by Persons in Custody~~ Briefing Deadlines

~~Petitions for writs of habeas corpus and motions filed pursuant to 28 U.S.C. §§ 2254 and 2255 by persons in custody shall be in writing and signed under penalty of perjury. Such petitions and motions shall be on the form contained in the Rules following 28 U.S.C. § 2254, in the case of a person in state custody, or 28 U.S.C. § 2255, in the case of a person in federal custody, or on forms adopted by general order of this court, copies of which may be obtained from the clerk of the court.~~ A party who files a petition under 28 U.S.C. § 2254 or a motion under 28 U.S.C. § 2255 must file any reply brief within 28 days after the answer brief is served.

N.D. Ind. L. Cr. R 47-3 ~~Disposition of Post Conviction Petitions and Motions Brought Pursuant to 28 U.S.C. § 2254 and § 2255 in Cases Involving Persons Under a Sentence of Capital Punishment~~ Special Notice Requirements in 28 U.S.C. § 2254 Death Penalty Habeas Corpus Cases

(a) ~~Operation and Scope.~~

- ~~———— (1) ——— These rules shall apply to habeas corpus petitions brought pursuant to 28 U.S.C. § 2254 and § 2255 by petitioners under a sentence of capital punishment.~~
- ~~———— (2) ——— To the extent that these rules are inconsistent with any other local rules of this court, these rules shall apply.~~
- ~~———— (3) ——— The district judge to whom a case is assigned shall handle all matters pertaining to the case, including application for certificate of appealability, motion for stay of execution, consideration of the merits, second or successive petitions, remands from the Supreme Court of the United States or the United States Court of Appeals, and all incidental or collateral matters. This rule does not limit a district judge's discretion to designate a magistrate judge, pursuant to 28 U.S.C. § 636, to perform such duties as the district judge deems appropriate or for an emergency judge to act in the absence of the assigned district judge.~~
- ~~———— (4) ——— If a second or successive petition is filed in this court, the judge of this district to whom the second or successive petition is assigned (“second judge”) shall communicate with the judge to whom earlier petitions were assigned (“first judge”) and, if the first judge is not a judge of this court, also with the chief judge of the circuit.~~
- ~~———— (5) ——— Pursuant to the Criminal Justice Act (18 U.S.C. § 3006A) and 21 U.S.C. § 848(q), counsel shall be appointed for all prisoners in cases within the scope of these rules if the prisoner is not already represented by counsel, is financially unable to obtain representation, and requests that counsel be appointed.~~
- ~~———— (6) ——— If the district court grants or denies a stay of execution, it shall set forth the reasons for the decision.~~
- ~~———— (7) ——— The district judge to whom a case is assigned under these rules may make changes in procedures in any case when justice so required.~~

(b) ~~Filing of a Petition.~~

- ~~———— (1) ——— Upon the filing of a petition within the scope of these rules, it shall be~~

~~immediately assigned to a district judge under the usual practices of the court. The clerk shall immediately notify the judge of his or her assignment and shall thereafter promptly notify, by telephone, the designated representatives of the Attorney General of the state in which the petition is filed. The Attorney General of Indiana has the obligation to keep the court informed as to the office and home telephone numbers of their designated representatives.~~

- ~~————— (2) In all petitions within the scope of this rule, the petitioner or movant shall file, within 14 days of the day of filing of the petition or motion, a legible copy of the documents listed below. If a required document is not filed, the petitioner or movant shall state the reason for the omission. The required documents are:~~
 - ~~————— (A) prior petitions, with docket numbers, filed by petitioner in any state or federal court challenging the conviction and sentence challenged in the current petition;~~
 - ~~————— (B) a copy of, or a citation to, each state or federal court opinion, memorandum decision, order, transcript of oral statement of reasons, or judgment involving an issue presented in the petition; and~~
 - ~~————— (C) such other documents as the district court may request.~~
- ~~————— (3) A petitioner shall include in his or her petition all possible grounds for relief and the scheduled execution date. If an issue is raised in a second or successive petition that was not raised in a prior petition, the petitioner shall state the reasons why the issue was not raised and why relief should nonetheless be granted.~~
- ~~————— (4) If an issue is raised that has not been exhausted in state court, was never raised in state court or was not raised on direct appeal in state court, the petitioner shall state the reasons why the issue was not raised and why relief should nonetheless be granted.~~
- ~~————— (5) Upon the filing of a petition within the scope of these rules, the district court clerk shall immediately provide the petitioner with a copy of this rule and a copy of Circuit Rule 22 adopted by the United State Court of Appeals for the Seventh Circuit.~~
- ~~————— (6) The clerk shall notify the clerk of the Court of Appeals of the filing of a petition within the scope of these rules, of significant events and the progress of the case, and of any subsequent appeal of such case. The clerk of this court shall send a copy of the final decision and any notice of appeal to the clerk of the state supreme court.~~

~~(c) Preliminary Consideration of Judge.~~

~~———— (1) The district judge shall promptly examine a petition within the scope of these rules and, if appropriate, order the respondent to file an answer or other pleading or take such other action as the judge deems appropriate.~~

~~———— (2) If the district judge determines, after examination of the petition, that the petition is a second or successive petition raising issues previously decided by a federal court, the district judge shall enter an appropriate order with a written finding so stating.~~

~~(d) Priority.~~ The district judge shall give priority on his or her calendar to scheduling and deciding cases within the scope of these rules.

~~(c) Motions for Immediate Stay of Execution.~~

~~———— (1) No motion for a stay of execution shall be filed unless accompanied by a petition for relief under 28 U.S.C. § 2254 or § 2255 which comports with these rules. The movant shall immediately notify opposing counsel by telephone of the filing.~~

~~———— (2) The movant shall attach to the motion for stay a legible copy of the documents listed in section (b)(2) of this rule, unless the documents have already been filed with the court. If the movant asserts that time does not permit the filing of a written motion, he or she shall deliver to the clerk a legible copy of the listed documents as soon as possible. If a required document is not filed, the movant shall state the reason for the omission.~~

~~———— (3) If the state has no objection to the motion for stay, the district court shall enter an order staying the execution.~~

~~———— (4) If the district court determines that the petition or motion is not frivolous and a stay is requested, it shall enter an order staying the execution.~~

~~———— (5) Following a decision on the merits, if the district court issues a certificate of probable cause, it shall enter an order staying the execution pending appeal. If the district court denies a certificate of probable cause, it shall not enter an order staying the execution pending appeal and it shall dissolve any stay of execution previously granted to petitioner by the district court.~~

~~———— (6) Except in the case of emergency motions, parties shall file motions with the district court clerk during the normal business hours of the clerk's office. The~~

~~motion shall contain a brief account of the prior actions of any court or judge to which the motion or a substantially similar or related petition for relief has been submitted.~~

~~(f) **Clerk's List of Cases.** The district court clerk shall maintain a separate list of all cases within the scope of these rules.~~

(a) Applicability. This rule applies to 28 U.S.C. § 2254 death-penalty habeas corpus cases.

(b) Required Notices. The clerk must notify those entitled to notice when:

- (1)** the case is opened;
- (2)** a stay of execution is granted or denied;
- (3)** a final order is issued; or
- (4)** a notice of appeal is filed.

(c) Entitlement to Notice. The following are entitled to notice

- (1)** the respondent;
- (2)** the Indiana Attorney General;
- (3)** the Indiana Supreme Court; and
- (4)** the Seventh Circuit.

(d) How to Give Notice. The Clerk will coordinate how to notify those entitled to notice.

N.D. Ind. L.P.R. 1–1 Scope

- (a) **Applicability.** These rules govern cases in which jurisdiction is based, in whole or in part, on 28 U.S.C. § 1338. The court may depart from these rules in exceptional circumstances.
- (b) **Citation.** The patent rules may be cited as “N.D. Ind. L.P.R. ____.”
- (c) **Compliance.** Litigants are expected to comply with these rules. They may not circumvent them by, for example, pursuing discovery into infringement and invalidity contentions by seeking discovery responses before the contentions process outlined below.

N.D. Ind. L.P.R. 2-1 Scheduling, Discovery, and Orders

- (a) **Scheduling Conference.** The court will hold a scheduling conference within 30 days after the last answer is filed.
- (b) **Discovery Plan.** The parties must comply with Fed. R. Civ. P. 26(f) before the conference. Their discovery plan must address these topics:
- Date/place of conference;
 - Counsel present/parties represented;
 - Case summary;
 - Jurisdictional questions;
 - Type of trial;
 - Discovery needed;
 - Electronic-information disclosures;
 - Stipulation regarding privilege claims/protecting trial-preparation materials;
 - Interrogatories;
 - Requests for admission;
 - Depositions;
 - Joinder of additional parties;
 - Amending pleadings; and
 - Settlement possibilities/mediation.
- (c) **Protective Orders.** The court strongly prefers jointly proposed protective orders. They should be filed with the discovery plan. If the parties are unable to agree on a protective order, they may submit competing proposed protective orders accompanied by memoranda explaining the differences between the proposed orders and the party's justification for its proposal. These memoranda may not exceed five pages.

- (d) **Discovery Order.** The court will issue a discovery order promptly after the 16(b) conference and rule on any protective-order requests.
- (e) **Confidential Disclosures.** Before a protective order is entered the parties may not delay making the disclosures these rules require—or responding to discovery—on confidentiality grounds. The producing party may designate confidential disclosures and discovery responses as “outside attorneys’ eyes only” until a protective order is entered. Once entered, all information must be treated according to the order’s terms.

N.D. Ind. L.P.R. 3-1 Preliminary Disclosures

- (a) **Preliminary Infringement Contentions.** Within 28 days after the last answer is filed, a party claiming patent infringement must serve on all parties its *preliminary infringement contentions*.
- (b) **Content.** The preliminary infringement contentions must include an infringement-claim chart for each accused product or process (the *accused instrumentality*). If two or more accused instrumentalities have the same relevant characteristics, they may be grouped together in the same chart. Each claim chart must contain the following contentions:

 - (1) Each claim of each patent in suit that is allegedly infringed by the accused instrumentality;
 - (2) A specific identification of where each limitation of the claim is found within each accused instrumentality, including for each limitation that the party contends is governed by 35 U.S.C. § 112(f), the identity of the structures, acts, or materials in the accused instrumentality that performs the claimed function; and
 - (3) Whether each limitation of each asserted claim is literally present in the accused instrumentality or present under the doctrine of equivalents.
- (c) **Document Production.** The party asserting patent infringement must produce to each party (or make available for inspection and copying) the following documents with its preliminary infringement contentions and identify—by production number—which documents correspond to each category:

 - (1) Documents demonstrating each disclosure, sale (or offer to sell), or any public use, of the claimed invention before the application date for each patent in suit or the priority date (whichever is earlier);
 - (2) All documents that were created on or before the application date for each patent in suit or the priority date (whichever is earlier) that demonstrate each claimed invention's conception and reduction to practice;
 - (3) A copy of the certified Patent Office-file history for each patent in suit; and
 - (4) All documents demonstrating ownership of the patent rights by the party asserting infringement.
- (d) **Safe Harbor.** Producing documents under this rule is not an admission that the document is – or constitutes – prior art under 35 U.S.C. § 102.

- (e) **Preliminary Invalidity Contentions.** Within 28 days after receiving the preliminary infringement contentions, each party opposing the patent-infringement claim must serve on all parties its *preliminary invalidity contentions*. These contentions must include a chart (or charts) identifying each allegedly invalid claim, and each item of prior art that anticipates or renders each claim obvious. Claim charts must contain the following contentions:
- (1) How and under what statutory section the item qualifies as prior art,
 - (2) Whether the prior-art item anticipates or renders each allegedly invalid claim obvious,
 - (3) A specific identification of where in the prior-art item each limitation of each allegedly invalid claim is found, including for each limitation alleged to be governed by 35 U.S.C. § 112(f), where the corresponding structures, acts, or materials are found in the prior-art item that performs the claimed function, and
 - (4) Why, if obviousness is alleged, the prior art renders the allegedly invalid claims obvious, including why combining the identified items of prior art demonstrate obviousness, and explain why a person of skill in the art would find the allegedly invalid claims obvious in light of such combinations (e.g., reasons for combining references).
 - (5) A statement identifying with specificity any other asserted grounds of invalidity of any allegedly invalid claims, including contentions based on 35 U.S.C. §§ 101, 112, or 251.
- (f) **Document Production.** The party opposing a patent-infringement claim must produce to all parties the following documents with its preliminary invalidity contentions. The producing party must separately identify by production number which documents correspond to which category.
- (1) Documents sufficient to show the operation of any aspects or elements of an accused instrumentality identified by the patent claimant in its preliminary infringement contentions charts; and
 - (2) A copy or sample of the prior art identified under N.D. Ind. L.P.R. 3(e). If these items are not in English, an English translation of the portions relied upon must be produced.
- (g) **Declaratory-judgment Actions.** The same disclosure process (including the same

disclosure sequence) applies in declaratory-judgment actions in which the plaintiff is asserting non-infringement, invalidity, or unenforceability of the patent(s) in suit. For example, in such actions the defendant-patentee will assert preliminary infringement contentions under the schedule set out above. If infringement is not contested, the parties seeking a declaratory judgment must comply with N.D. Ind. L.P.R. 3(c) and 3(f) within 28 days after the last answer is filed.

N.D. Ind. L.P.R. Claim-construction Proceedings

- (a) Exchanging Terms.** Within 14 days after receiving the preliminary invalidity contentions (or within 42 days after receiving the preliminary infringement contentions in those actions in which validity is not at issue), each party must serve on all other parties a list of claim terms that the party contends should be construed by the court, and identify any claim term that the party contends should be governed by 35 U.S.C. § 112(f).
- (b) Exchanging Preliminary Claim Constructions and Extrinsic Evidence; Parties' Conference.**

 - (1)** Within 14 days after the proposed terms for construction are exchanged, the parties must exchange proposed constructions of each term. Each preliminary claim construction must also, for each term which any party contends is governed by 35 U.S.C. § 112(f), identify the function of that term and the structures, acts, or materials corresponding to that term's function.
 - (2)** When the parties exchange their preliminary claim constructions, they must also identify all references from the specification or prosecution history that support its construction and designate any supporting extrinsic evidence including:

 - (A)** dictionary definitions;
 - (B)** citations to learned treatises and prior art, and
 - (C)** testimony of percipient and expert witnesses.
 - (3)** Within 14 days after the preliminary claim constructions are exchanged, the parties must meet and confer to limit the terms in dispute by narrowing or resolving differences and plan to prepare a *joint claim-construction and prehearing statement*. The parties must also jointly identify no more than ten disputed terms per patent in suit, unless the court grants more for inclusion in the joint claim-construction and prehearing statement. If a dispute arises as to which terms to include in the joint claim-construction and prehearing statement, each side must be presumptively limited to five disputed terms per patent in suit. This limit may only be altered by leave of court.
- (c) Joint Claim-construction and Prehearing Statement.** Within 14 days after they meet and confer, the parties must complete and file a *joint claim-construction and prehearing statement*. This statement must address the disputed terms and contain the following information:

- (1) The construction of those terms on which the parties agree;
 - (2) Each party's construction of each disputed term (with the identity of all references from the specification or prosecution history that support its construction) and the identity of any extrinsic evidence known to the party on which it intends to rely either to support its construction or to oppose another party's construction, including dictionary definitions, citations to learned treatises and prior art, and testimony of percipient and expert witnesses;
 - (3) The anticipated length of time necessary for the claim-construction hearing; and
 - (4) If witnesses are to be called at the claim-construction hearing, the identity of each such witness, and for each witness, a summary of his or her testimony including, for any expert witness, a report containing the expert's claim-construction opinions and the reasons for them.
- (d) **Completing Claim-construction Discovery.** Within 21 days after the *joint claim-construction and prehearing statement* is filed, the parties must complete all discovery relating to claim construction, including witness depositions.
- (e) **Claim-construction Briefs**
- (1) **Opening Briefs.** Within 14 days after completing claim-construction discovery, the parties must file their respective opening briefs and any evidence supporting their claim constructions.
 - (2) **Length.** Opening briefs may not exceed 30 pages without leave of court.
 - (3) **Response Briefs.** Within 21 days after receiving an opening brief, each opposing party must file any response briefs and supporting evidence.
 - (4) **Length.** Response briefs may not exceed 20 pages without leave of court.
 - (5) **Additional Briefs.** Reply and surreply briefs are not permitted without leave of court.
- (f) **Claim-construction Hearing.** When necessary to construe the claims, the court will endeavor to conduct a claim-construction hearing within 63 days after briefing is complete.
- (g) **Tutorial Hearings.** The court may order a tutorial hearing to occur before, or during, the claim-construction hearing.

- (h) **Orders.** The court will work expeditiously to issue a prompt claim-construction order after the hearing.

N.D. Ind. L.P.R. 5-1 Final Patent Disclosures

(a) Final Infringement Contentions.

- (1) *Due Date.*** Within 28 days after the court's claim-construction order is entered, any party asserting infringement must serve on all parties its final infringement contentions.
- (2) *Contents.*** Parties may not assert at trial any infringement contentions not set out in its final infringement contentions.
- (3) *Amendments.*** Final infringement contentions may not identify additional accused products or processes not contained in the preliminary infringement contentions without good cause (e.g., discovery of previously undiscovered information or an unanticipated claim-construction ruling). The party asserting infringement must include a separate statement outlining the specific grounds that it claims constitute good cause for the amendment.
- (4) *Exclusion.*** Accused infringers may seek to exclude amendments on grounds that good cause does not exist.
- (5) *Due Date.*** Motions to exclude must be filed within 14 days after receiving the final infringement contentions.
- (6) *Failure to Object.*** Unopposed amendments are deemed effective.

(b) Final Invalidity Contentions.

- (1) *Due Date.*** Within 21 days after receiving the final infringement contentions, each accused infringer must serve on all parties its final invalidity contentions.
- (2) *Contents.*** Final invalidity contentions must include that party's final statement of all contentions. The party may not assert at trial any invalidity contentions not contained in its final invalidity contentions.
- (3) *Amendments.*** If the final invalidity contentions identify additional prior art, the amendment must be supported by good cause (e.g., discovery of previously undiscovered information or an unanticipated claim-construction ruling) and the accused infringer must include a separate statement providing the specific grounds establishing good cause for the amendment.
- (4) *Exclusion.*** The party asserting infringement may seek to exclude the amendment

on grounds that good cause does not exist.

- (5) ***Due Date.*** Motions to exclude must be filed within 14 days after receiving the final invalidity contentions.
- (6) ***Failure to Object.*** Unopposed amendments are deemed effective.

N.D. Ind. L.P.R. 6-1 Expert Discovery

- (a) Applicability.** This rule governs expert discovery in patent cases.
- (b) Exception.** This rule does not apply to claim construction.
- (c) Reports.**
 - (1) *Opening Reports.*** Opening expert reports on issues the proponent will bear the burden of proof at trial are due within 28 days after the final invalidity contentions or, in cases in which invalidity is not at issue, within 28 days after the final infringement contentions.
 - (2) *Rebuttal Reports.*** Rebuttal expert reports are due 28 days after opening expert reports.
- (d) Depositions.** Expert depositions must be completed within 35 days after receiving an expert's rebuttal report.